

DAC/RCE
JFM

PTO/SB/64 (01-08)

Approved for use through 03/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
TEVNHC 3.0-200

First named inventor: Fiona Catherine Millar

Application No: 08/999,752-Conf. #4312

Art Unit: 1615

Filed: June 4, 1997

Examiner: S.T. Tran

Title: MEDICINAL AEROSOLS AND METHODS OF DELIVERY THEREOF

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee Small entity – fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27. Other than small entity – fee \$ 1,540.00 (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in
the form of an RCE and Petition For Extension of Time (identify type of reply): has been filed previously on _____.
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

 has been paid previously on _____.
 is enclosed herewith.

06/23/2008 LTRUONG 00000022 08999752

-03-FG+1254

-1640.00 DA

06/23/2008 LTRUONG 00000022 08999752

[Page 1 of 2]

01 FC:1453

1540.00 DA

3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

June 17, 2008

Date

Aaron S. Eckenthal

Typed or printed name

58,891

Registration Number, if applicable

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK,
LLP
600 South Avenue West
Westfield, New Jersey 07090

Address

(908) 654-5000

Telephone Number

Enclosures:

- Fee Payment
- Reply
- Terminal Disclaimer Form
- Additional sheets containing statements establishing unintentional delay
- Other: _____

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: June 17, 2008

Signature:  (Aaron S. Eckenthal)



I hereby declare that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: June 17, 2008

Signature:

(Aaron S. Eckenthal)

Docket No.: TEVNHC 3.0-200
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: :
Fiona Catherine Millar :
: Application No.: 08/999,752 : Confirmation No.: 4312
: Filed: June 4, 1997 : Art Unit: 1615
: For MEDICINAL AEROSOLS AND : Examiner: S.T. Tran
METHODS OF DELIVERY THEREOF :
:

RENEWED PETITION UNDER 37 CFR § 1.137(b)
TO REVIVE APPLICATION UNINTENTIONALLY ABANDONED

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On May 21, 2007 Applicant filed a petition to revive Application No. 08/99,752. That petition was filed pursuant to 37 C.F.R. § 1.137(b) for unintentional abandonment. A copy of the petition, the necessary reply and other accompanying documentation which were filed are attached as Exhibit A.

A Decision on Petition was issued on December 18, 2007 dismissing the petition. The Decision stated that requirement (1), namely the "required reply," was not satisfied.

Applicant seeks this renewed petition in the form of a Request For Continued Examination (RCE), and an Amendment responsive to the outstanding final Office Action of August 22, 2002, along with a four-month extension of time. Therefore, Applicant respectfully requests reconsideration of the original petition in view of this renewed petition.

06/23/2008-LTRUONG-00000022-121095-08999752
01-EC-1453 885573.1
1540.00 DA

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have. If there are any additional charges in connection with this renewed petition, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 17, 2008

Respectfully submitted,

By 
Aaron S. Eckenthal
Registration No.: 58,891
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

Exhibit A



PLEASE ACKNOWLEDGE RECEIPT BY RETURNING THIS CARD

Via: First Class Mail

Atty Docket No.: TEVNHC 3.0-200

Due Date:

Title: MEDICINAL AEROSOLS AND METHODS OF DELIVERY THEREOF

Application No.: 08/999,752-Conf. #4312

Documents Filed:

Petition to Revive Application Unintentionally Abandoned (2 pages)

Charge \$1,500.00 to deposit account 12-1095

Sender's Initials: SPF/jdh
LD-539\

Mailing Date: May 18, 2007

767933_1.DOC

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O I P E 14P84
JUN 20 2008
PATENT & TRADEMARK OFFICE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
TEVNHC 3.0-200

First named inventor: Fiona Catherine Millar

Application No: 08/999,752-Conf. #4312

Art Unit: 1615

Filed: June 4, 1997

Examiner: Susan T. Tran

Title: MEDICINAL AEROSOLS AND METHODS OF DELIVERY THEREOF

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- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity – fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.

Other than small entity – fee \$ 1,500.00 (37 CFR 1.17(m)) Please charge to Deposit Acct. No. 12-1095.

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ a CPA and Extension Petition

(identify type of reply):

(Since Applicant's prior attorneys' Deposit Acct. contained insufficient funds for the Extension Petition, if such fees are required for this petition, please charge the Extension Petition fees to Deposit Acct. 12-1095.)

X

has been filed previously on February 24, 2003

is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

has been paid previously on _____

is enclosed herewith.

3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

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Signature

May 18, 2007

Date

Shawn P. Foley

Typed or printed name

33,071

Registration Number, if applicable

LERNER, DAVID, LITTBENBERG, KRUMHOLZ & MENTLIK,
LLP
600 South Avenue West
Westfield, New Jersey 07090

Address

(908) 518-6346

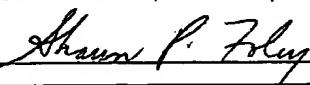
Telephone Number

Enclosures: Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: _____

Page 2 of 2

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First-Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: May 18, 2007

Signature:  (Shawn P. Foley)



Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2008

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	(\$)	1,540.00
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Complete if Known	
Application Number	08/999,752-Conf. #4312
Filing Date	June 4, 1997
First Named Inventor	Fiona Catherine Millar
Examiner Name	S. T. Tran
Art Unit	1615
Attorney Docket No.	TEVNHC 3.0-200

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Order None Other (please identify): _____
 Deposit Account Deposit Account Number: 12-1095 Deposit Account Name: Lemer, David, Littenberg, Krumholz & Mentlik, LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below Charge fee(s) indicated below, except for the filing fee
 Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 Credit any overpayments

FEES CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

<u>Total Claims</u>	<u>Small Entity Fee (\$)</u>
8 - 22 =	50
x	25

Each independent claim over 3 (including Reissues)

<u>Fee (\$)</u>	<u>Fee (\$)</u>
210	105

Multiple dependent claims

<u>Fee (\$)</u>	<u>Fee (\$)</u>
370	185

<u>Total Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
8 - 22 =	x	=	

<u>Multiple Dependent Claims</u>	
<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>

<u>Indep. Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
1 - 3 =	x	=	

<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
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HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- 100 =	/50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1453 Petition to revive unintentionally abandoned ...

1,540.00

SUBMITTED BY				
Signature		Registration No. (Attorney/Agent)	58,891	Telephone (908) 654-5000
Name (Print/Type)	Aaron S. Eckenthal	Date	June 17, 2008	